

HOFMANN & SCHWEITZER
Attorneys for Claimant/Third-Party Plaintiff Kimberly Wolfe
1130 Route 202 South, Suite A7
Raritan, NJ 08869
Tel: 908-393-5662

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

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IN RE: COMPLAINT OF ADRIAN AVENA, AS OWNER
AND AA COMMERCIAL, LLC., AS OWNER PRO HAC
VICE, OF THE FISHING VESSEL CONCH'RD, FOR
EXONERATION FROM OR LIMITATION OF LIABILITY

1:21-cv-00515(KMW)(EAP)

**NOTICE OF APPEAL
TO THE THIRD CIRCUIT
COURT OF APPEALS OF
THE COURT'S ORDER
DATED NOVEMBER 4, 2022**

-----x
KIMBERLY WOLFE, AS PERSONAL REPRESENTATIVE OF
THE ESTATE OF AARON GREENBERG, AND ON
BEHALF OF KG, OVER WHOM KIMBERLY WOLFE IS THE
APPOINTED CO-GUARDIAN, AND WHO IS THE SURVIVING
MINOR CHILD OF THE DECEDEDENT, AARON GREENBERG,

Third-Party Plaintiff,

v.

DANIEL J. AVENA, THE UNITED STATES OF AMERICA,
CM HAMMAR AB and REVERE SURVIVAL, INC.

Third-Party Defendants.

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Notice is hereby given that Claimant/Third-Party Plaintiff Kimberly Wolfe, hereby appeals to the
United States Court of Appeals for the Third Circuit from the Order of the Honorable Karen M. Williams
dated November 4, 2022 (Docket No. 96) and entered on that date, a copy of which is annexed, granting
Third-Party Defendant United States of America's motion to dismiss all of the claims and cross-claims
asserted against it in this action.

Dated: Raritan, New Jersey
November 10, 2022

HOFMANN & SCHWEITZER
Attorneys for Claimant/Third-Party Plaintiff

By:



Paul T. Hofmann (PH1356)
1130 Route 202 South, Ste. 7A
Raritan, New Jersey 08869
Tel: 908-393-5662 Fax: 212-465-8849
paulhofmann@hofmannlawfirm.com

To: Brian McEwing, Esq.
Mary Elisa Reeves, Esq.
Anthony Sabitsky, Esq.
Reeves McEwing, LLP
Attorneys for Adrian Avena & AA Commercial, LLC
10 Andrews Lane, P.O. Box 599
Dorchester, NJ 08316

Michael L. Testa, Esq.
Stephen E. Parrey, Esq.
Testa Heck Testa & White, PA
Attorneys for Daniel J. Avena
424 Landis Avenue
Vineland, NJ 08360

Jay A. Hamad, Esq.
Marshall Dennehey Warner Coleman & Goggin
Attorneys for CM Hammar AB
88 Pine Street, 21st Floor
New York, NY 10005

Julie B. Dorfman, Esq.
Marshall Dennehey Warner Coleman & Goggin
Attorneys for CM Hammar AB
25 Eagle Rock Ave., Suite 302
Roseland, NJ 07068

Michael Noblett, Esq.
Catherine Everett, Esq.
Kenneth B. Danielsen, Esq.
Cipriani & Werner
Attorneys for Revere Survival, Inc.
485 Route 1 South, Building E, Ste. 120
Iselin, NJ 08830

Bradley J. Preamble, Esq.
Matthew R. Hyde, Esq.
Michael Gracia, Esq.
U.S. Department of Justice
Attorneys for United States of America
Aviation, Space, & Admiralty Litigation
175 N. Street, NE, 8th Floor
Washington, DC 20002

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

In re Complaint of ADRIAN AVENA, as
Owner, and AA COMMERCIAL, LLC, as
Owner *Pro Hac Vice*, of the Fishing Vessel
CONCH'RD, for Exoneration from or
Limitation of Liability

Civil Action
No. 1:21-515-KMW-EAP

ORDER

This matter having come before the Court by way of the United States of America's (the "United States") Motion to Dismiss all of the claims and crossclaims asserted against it in this action for Lack of Subject Matter Jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1),¹ and for Judgment on the Pleadings as to the same pursuant to Fed. R. Civ. P. 12(c) (ECF No. 58), the Opposition thereto filed by AA Commercial, LLC and Adrian Avena ("Petitioners") (ECF. 63) and Kimberly Wolfe ("Third-Party Plaintiff") (ECF Nos. 64, 65), and the United States' Reply (ECF No. 66); and the Court having read the submissions and heard the arguments of counsel during oral argument on the Motion held on November 2, 2022; and for the reasons set forth on the record;

IT IS this 4th day of November 2022, hereby **ORDERED** that the United States' Motion (ECF No. 58) is **GRANTED**; and it is further

¹ The United States styled its Motion as one to dismiss for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(h)(3). However, and as the Court explained during oral arguments, where such motions are predicated on the federal government's assertion of sovereign immunity, they are more properly analyzed under Fed. R. Civ. P. 12(b)(1). See *CNA v. United States*, 535 F.3d 132 (3d Cir. 2006).

ORDERED that all claims and crossclaims asserted against the United States in this matter are hereby **DISMISSED WITH PREJUDICE** for lack of subject matter jurisdiction; and it is further

ORDERED that, due to the dismissal of the United States from this action, the Motion of Third-Party Plaintiff for Leave to File a Second Amended Third-Party Complaint (ECF No. 84) is hereby rendered **MOOT**; and it is further

ORDERED that Third-Party Plaintiff is hereby **GRANTED** leave to file a Motion to File an Amended Third-Party Complaint within thirty (30) days from the entry of this Order.

/s/ Karen M. Williams
KAREN M. WILLIAMS
United States District Judge

cc: Hon. Elizabeth A. Pascal, U.S.M.J.